

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

U.S. COMMODITY FUTURES TRADING  
COMMISSION,

Plaintiff,

JAMES de WET,

Defendant.

05 Civ. 8401 (HB)

~~PROPOSED~~ Supplemental Order  
for Entry of  
Judgment by Default

On April 10, 2006, this Court granted plaintiff U.S. Commodity Futures Trading Commission's (the "Commission") application for entry of judgment by default in this action and entered an Order for Entry of Judgment by Default With Ancillary Equitable Relief (the "April 10 Order"). In an Endorsement to the April 10 Order the Court indicated it was excluding monetary relief at that time, and (i) required that defendant James de Wet ("de Wet") be re-served with the Commission's application for entry of default judgment and supporting papers, (ii) provided an additional 30 days for defendant to contest this action, and (iii) provided that if defendant did not contest the Commission will re-submit its application for monetary relief.

As required by the April 10 Order, defendant was re-served with the plaintiff's application for entry of default judgment and all supporting papers on April 10, 2006. Defendant has not thereafter contested this action. Accordingly,

**IT IS HEREBY ORDERED** that:

A. All terms of the Order for Entry of Judgment by Default With Ancillary Equitable Relief entered in this matter on April 10, 2006 remain in full force and effect.

B. Civil Monetary Penalty: Defendant de Wet shall pay a civil monetary penalty in the amount of \$120,000 for the charges of violations of the Commodity Exchange Act (the "Act") set forth in the Complaint. De Wet shall pay the civil monetary penalty by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's check or bank money order, made payable to the U.S. Commodity Futures Trading Commission, and sent to Dennese Posey, or her successor, Division of Enforcement, U.S. Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21<sup>st</sup> Street, NW, Washington, D.C. 20581, under cover of a letter that identifies the defendant and the name and docket number of the proceeding. De Wet shall simultaneously transmit a copy of the cover letter and the form of payment to the Director, Division of Enforcement, U.S. Commodity Futures Trading Commission, at the following address: Three Lafayette Centre, 1155 21<sup>st</sup> Street, NW, Washington, D.C. 20581, and to the Regional Counsel, U.S. Commodity Futures Trading Commission, Eastern Regional Office, at the following address: 140 Broadway, 19<sup>th</sup> floor, New York, NY 10005.

C. Restitution: De Wet shall pay restitution to defrauded managed account customers in the amount of \$ 828,390 (eight hundred twenty-eight thousand three hundred ninety dollars) plus pre-judgment interest and post-judgment interest. Post-judgment interest after the date of this Order until the restitution is paid in full shall be paid at the post-judgment interest rate set forth in 28 U.S.C. § 1961. De Wet is ordered to make such payments to the Registry of this Court by cashier's check, certified check or postal money order, under cover of a letter that identifies the name and docket number of this action and the name of this Court, with a copy to Stephen J. Obie, Regional Counsel for the Commission. Funds frozen pursuant to the Statutory Restraining Order entered by this Court on October 21, 2005 shall be paid into the Registry of this Court by the financial institution holding such funds by cashier's check, certified check or

postal money order, under cover of a letter that identifies the name and docket number of this action and the name of this Court, with a copy to Stephen J. Obie, Regional Counsel for the Commission, and may be used as partial or full discharge of de Wet's restitution obligations under this section of this Order. All payments made pursuant to this section of this Order by de Wet shall first be made to the defrauded customers for restitution, pursuant to a payment plan that will be determined by the Court, until those amounts (including interest) are fully satisfied. All payments after satisfaction of the restitution shall be applied to the civil monetary penalty described herein.

D. Disgorgement: De Wet shall disgorge all benefits received, directly or indirectly, from acts or practices which constitute violations of the Act as described in the April 10 Order by depositing into the Registry of this Court \$63,070 (sixty-three thousand and seventy dollars), plus pre-judgment and post-judgment interest and provide the Commission and the Court with a written description of the funds and assets so disgorged. De Wet is ordered to make such payments to the Registry of this Court by cashier's check, certified check or postal money order, under cover of a letter that identifies the name and docket number of this action and the name of this Court, with a copy to Stephen J. Obie, Regional Counsel for the Commission. All disgorgement payments made pursuant to this Order by de Wet shall first be used to pay restitution to the defrauded customers, pursuant to a payment plan that will be determined by the Court, until those amounts (including interest) are fully satisfied. De Wet's disgorgement obligations under this paragraph are co-terminus with de Wet's restitution obligations, such that partial or full satisfaction or discharge of disgorgement obligations shall simultaneously result in identical partial discharge of de Wet's restitution obligations.

E. Prohibition on Transfer of Funds: De Wet shall not transfer or cause others to transfer funds or other property to the custody, possession or control of any other person for the purpose of concealing such funds or property from the Court, the Commission, or any officer that may be appointed by the Court.

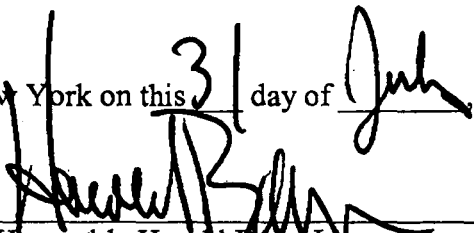
F. Third-Party Beneficiaries: Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each of the defrauded customers of de Wet is explicitly made an intended third-party beneficiary of this Order and may seek to enforce this Order to obtain satisfaction of any portion of the restitution amount which has not been paid by de Wet.

G. Notices: All notices required to be given by any provision in this Order shall be sent by certified mail, return receipt requested, as follows:

Notice to Commission: Stephen J. Obie, Regional Counsel  
U.S. Commodity Futures Trading Commission  
Division of Enforcement - Eastern Regional Office  
140 Broadway, 19<sup>th</sup> floor  
New York, New York 10005; and

H. This Court shall retain jurisdiction of this case to assure compliance with this Order and for all other purposes related to this action.

SO ORDERED, at New York, New York on this 31 day of July 2006.

  
\_\_\_\_\_  
Honorable Harold Baer, Jr.  
UNITED STATES DISTRICT JUDGE